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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/308,913	05/26/1999	Yakov I. Levin		6831

7590
Ilya Zborovsky
6 Schoolhouse Way
Dix Hills, NY 11746

06/26/2003

EXAMINER

OROPEZA, FRANCES P

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 06/26/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/308,913

Applicant(s)

LEVIN, YAKOV I.

Examiner

Frances P. Oropeza

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 4/25/03 (Amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3 and 4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3 and 4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Response to Amendment filed 4/25/03

1. The Applicant's arguments filed 4/25/03 have been fully considered but they are not convincing. As related to the 35 U.S.C. 102(b) and 35 U.S.C. 103(a) rejections of record, the Applicant asserts new features were added to newly submitted claim 3 as compared to the original claim 1, and further asserts the prior art does not read on these new features.

The Examiner disagrees. The newly submitted claim 3 appears to be virtually identical to the original claim 1 and the Examiner is unable to identify any newly added features. When the Applicant asserts the new features are not disclosed by the prior art, the Examiner does not know which features the Applicant is referencing, hence the Examiner is unable to respond to the Applicant's arguments of missing features.

Claim Rejections - 35 USC § 112

2. Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention.

Claim 3 is unclear because:

in line 1 it appears "method of influencing a body, comprising the steps of" should be --method for influencing the body comprising the steps of:--,

in line 3 it appears "obtained data with calculation of" should be the --biopotentials to calculate--,

in line 6, "in form" should be --in the form--,

in line 10 it appears “from a register” should be --from register-- (since “intervals” is plural),

in line 12 an element “a frequency spectrum” is claimed and in line 9 an element “a frequency spectrum” is claimed; it appears these are different elements with the same name and clarification is needed,

in line 14 it appears “of spectral” should be --of the spectral--,

in line 17 it appears “parameter” should be --parameters--, and

in lines 17-19 it appears “and transforming the values; using a sound card; transforming the values of musical sound parameters, using a sound card into signals” should be --and transforming the values of musical sound parameters, using a sound card, into signals--.

Claim 4 is unclear because:

in line 1 it appears “claim 4; and further comprising” should be --claim 4 further comprising:--, and

in line 3, it appears “in each” should be --in the each--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. Claims 3-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Saperston (US 5267942). Saperston discloses a method to influence physiological processes through physiological stimuli. The fundamental brain wave (EEG) of a patient is defined using a Fourier transform, and the tone by itself or in combination with music (col. 7 @ 56-68) is used to effectively influence the patient’s physiological responses (col. 3 @ 31-34).

Claim Rejections - 35 USC § 103

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Monroe (US 5356368) in view of Saperston (US 5267942).

Monroe disclose a method for inducing desired states of consciousness, using an EEG waveform to create a binaural beat to treat a sleeping disorder (col. 2 @ 59-40).

Monroe discloses the claimed invention except for the use of a Fourier transform to optimize the isolation of the brain wave.

Saperston teaches signal processing using a Fourier transform for the purpose of defining fundamental brain waves that enable creation of a signal used to optimally influence the patient's physiological processes. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used the Fourier transform to process the EEG signal in the Monroe system in order to gain a more precise representation of the fundamental brain wave to ensure the resulting customized signal used to influence the patient has optimal impact on the state of consciousness of the patient (col. 7 @ 56 - col. 8 @ 5).

In response to the Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941

(Fed. Cir. 1992). In this case, Saperston teaches the use of a Fourier transform to process the EEG signal and to define the fundamental brain wave so a patient customized signal is created that will have optimal impact to change the patient's physiological processes. Monroe uses a customized signal to entrain the brain waves of the patient so a desired state of consciousness is established. When Monroe used the teaching of Saperston to ensuring the fundamental brain wave is defined and used in the creation of the customized signal, the resulting customized signal more effectively establishes the desired state of consciousness and the total process of creating a desired state of consciousness is more efficient.

Specification

5. The specification references two figures, but the Examiner is unable to find the two figures in the application. This objection to missing figures was also noted in the previous office action (Paper No. 6) and the Applicant responded that the PCT drawings correspond to the drawings in the instant application and should be considered an integral part of the instant application. This response is not adequate. The Applicant is required to furnish drawing under 37 CFR 1.81. No new matter may be introduced in the required drawings. **The Applicant is required to submit drawings in reply to the Office action to avoid abandonment of the application.** The objection to the drawings will not be held in abeyance.

Claim Objections

6. To improve the readability of the claims, the following format is suggested:

-- 3. A method for influencing a body comprising the steps of:

registering physical parameter biopotentials;

transforming and processing the biopotentials to calculate a biosignal characteristic generalized parameter;

transforming the biosignal characteristic generalized parameter on the basis of detected criterial correspondence into a control signal and forming an external sound effect;

implementing ...--

Abstract

7. The abstract of the disclosure is objected to because the abstract should be a concise statement of the technical disclosure and should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details. The Applicant has copied the independent claim virtually verbatim and has called it the abstract. A new abstract is needed which defines the invention in less complex terms. Appropriate correction is required.

Statutory Basis

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Conclusion

The Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

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the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Fran Oropeza, telephone number is (703) 605-4355. The Examiner can normally be reached on Monday – Thursday from 6 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Angela D. Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4520 for regular communication and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist, telephone number is (703) 308-0858.

Frances P. Oropeza
Patent Examiner
Art Unit 3762

6/20/03



ANGELA D. SYKES
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